

Town of Mashpee

16 Great Neck Road North, Mashpee, MA 02649

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Zoning Board of Appeals Minutes 05/14/2014

MASHPEE ZONING BOARD OF APPEALS MAY 14, 2014 MINUTES

The Mashpee Zoning Board of Appeals held Public Hearings on Wednesday, May 14, 2014, at 6:00 p.m. in the Waquoit Room at the Mashpee Town Hall, 16 Great Neck Road North. Chairman, Jonathan Furbush, Vice Chairman, William A. Blaisdell, Clerk, Ronald Bonvie, Board Members, James Reiffarth, and Richard Jodka, Associate Members Domingo K. DeBarros and Scott Goldstein were present and acting throughout. Building Commissioner, Richard Morgan was also present.

Chairman, Jonathan Furbush opened the meeting at 6:00 p.m. and announced that the meeting was being televised live on local Mashpee television.

PLEDGE OF ALLEGIANCE

CONTINUED HEARINGS

ASD Realty Trust, Alfred S. DeFazio, Trustee: Request a Special Permit under §174-25.I (9) of the Zoning By-laws to allow for construction of a landing, stairs, pier, ramp and float extending across a total of more than seventy feet of coastal beach, coastal bank, salt marsh, or bordering vegetated wetlands and/or coastal wetlands, on property located in an R-3 Zoning District at 204 Captains Row, (Map 90 Parcel 2), Mashpee, MA. (At the request of the Attorney, continued from March 12, 2014 Public Hearings, open but not heard).

ASD Realty Trust, Alfred S. DeFazio, Trustee: Request a Variance under Article V §174-31 (Land Space Requirements) of the Zoning By-Laws to vary the side yard setback from property line to allow for construction of a dock, pier, and float, on property located in an R-3 Zoning District at 204 Captains Row, (Map 90 Parcel 2), Mashpee, MA. (At the request of the Attorney, continued from March 12, 2014 Public Hearings, open but not heard).

Attorney, Kevin Kirrane representing Mr. DeFazio's request to construct a dock complex on his property at 204 Captains Row. Normally, a petition of this nature would only require approval from the Conservation Commission. But because the length of the dock exceeds 70 feet and requesting 90 feet from dry land to the Mashpee River, the applicant is required to obtain a Special Permit from the Zoning Board of Appeals.

The record reflects the Conservation Commission has voted and approved an Order of Conditions to construct this dock complex on the lot. In addition, there was a question regarding the above ground pool that was built in back of the existing house and some deck work that was in need of permitting, and some plantings that apparently had not survived. The Board suggested the applicant provide the necessary plantings to obtain the certificate of compliance with Conservation. Mr. Kirrane provided the Board with the certificate of compliance and that matter was resolved. He also attached the Order of Conditions.

Mr. Kirrane stated he also applied for Variance relief because the lot is an extremely odd shaped, and is next to an association parcel which occupies most of the 30 foot wide lot fronting the Mashpee River. The bylaws requires a 15 foot sideline setback and taking 15 feet from each side would obtain the whole portion of the lot where it abuts the Mashpee River, and someone would not be able to construct any facility of size in that area because of the 30 foot requirement and 15 foot setback from each side. Mr. Kirrane provided pictures of the property as well pictures of other docks that were approved in the area. This property would be at a significant hardship and disadvantage if it were unable to take advantage of the fact that it has frontage on the Mashpee River as most of his neighbors, and he suggested that this hardship does relate specifically to the fact that the width of the lot at the Mashpee River is only 30 feet and without the appropriate relief from Zoning Board of Appeals, he would be unable to construct a dock of any kind.

The proposed dimension from the northerly property line is 13.8 feet and the proposed dimension from the southerly property line at the location of the dock structure is 11.5 feet. The Board is authorized to issue a special permit relative to the spanning of more than 70 feet of wet land resource areas provided the Board can determine or find that the proposed dock does not interfere with free passage of travel by

water or land, and further than its approval will not cause or contribute to the substantial degradation on the marine coastal environment. The Board knows the Conservation Commission is the committee within the Town of Mashpee as well as any other town within the Commonwealth of Massachusetts, designated to deal with issues as they relate to impacts on wetland resource areas. Since the Conservation Commission approved and issued an order of conditions, in this particular instance it can be presumed what is being proposed, approved, and conditioned does not create any interference with travel, or contribution to the degradation of marine or coastal resource areas. The Board would be well within its discretion to make the appropriate findings as it relates to the grant of a special permit, to allow the dock span more than 70 feet of wetland resource areas, and in relation to the variance. The hardship does relate to the configuration and shape of the dock. The Board can grant the relief without substantial detriment to the neighborhood or to the community.

The plan depicts the lot lines extending further into the mean low water area on the southerly side, to address any issues that may come up in the event there's any State permitting.

Mr. Reiffarth asked if the Town requires two separate deeds showing salt marsh and into upland. Mr. Kirrane stated it depends on where the lot lines are and how the lot is depicted. You could actually have a description of the lot that goes to mean high water, and mean low water, so it doesn't necessarily require two separate deeds if your lot description is to mean low water. He relies on the engineer to provide deed information when he prepares his plans.

Jonathan read the Harbormaster comments into the record stating; "The property line is within 11'.5" of the proposed dock and Chapter 91 requires 25' and would need to be addressed before the permit is approved. The Harbormaster requires that the dock/floats must be updated to black hard plastic encapsulated block flotation and all the foam/Styrofoam be removed and disposed of properly. This will help eliminate the issue of storm bourn debris on our bays, lakes and rivers. Also that the street address must be permanently and clearly displayed with minimum of 3" block letters with contrasting color at end of pier/piling for emergency purposes, and in addition to the owners address be permanently affixed on all floats and ramps with 3" block letters with contrasting color. Otherwise, The Harbormaster has no issue with this plan. Thank you, Stephen Mone, Harbormaster."

Jonathan read the Conservation Commission comments into the record stating; "204 Captain's Row has been permitted through Conservation."

Jonathan stated the Building Permit was issued on May 14, 1998.

Mr. Blaisdell asked Mr. Kirrane about the side setback of 15 feet and the Harbormaster is quoting 25 feet. Mr. Kirrane stated Chapter 91 is the State law and has nothing to do with the local bylaw.

Mr. Bonvie made a motion to issue a Special Permit to ASD Realty Trust, Alfred S. DeFazio, Trustee Request a Special Permit under §174-25.1 (9) of the Zoning By-laws to allow for construction of a landing, stairs, pier, ramp and float extending across a total of more than seventy feet of coastal beach, coastal bank, salt marsh, or bordering vegetated wetlands and/or coastal wetlands, on property located in an R-3 Zoning District at 204 Captains Row, (Map 90 Parcel 2), Mashpee, MA. Making reference to the Harbormaster requirements. Referencing a plot plan prepared for owner of record; Alfred S. DeFazio, Trustee, ASD Realty Trust 35 Butts Street, Newton Upper Falls, MA 02164, by Cape & Island Engineering, 800 Falmouth Road Ste. 301C, Mashpee, MA. Project: Proposed Dock Plan 204 Captains Row, Mashpee, MA. Sheet No: 1 of 2, dated: 12/2/2013, revision date, 2/10/14, and 2/27/14. Drawing Title: Proposed Pier, Ramp & Float Site Plan.

Mr. Jodka seconded, yes, Mr. Furbush, yes, Mr. Blaisdell, yes, Mr. Reiffarth, yes. All were in favor.

Mr. Bonvie made a motion to issue a Variance to ASD Realty Trust, Alfred S. DeFazio, Trustee: Request a Variance under Article V §174-31 (Land Space Requirements) of the Zoning By-Laws to vary the side yard setback from property line to allow for construction of a dock, pier, and float, on property located in an R-3 Zoning District at 204 Captains Row, (Map 90 Parcel 2), Mashpee, MA. The issued Variance being 1.2 feet to the North, and 3.5 feet to the South. Making reference to the Harbormaster requirements. Referencing a plot plan prepared for owner of record; Alfred S. DeFazio, Trustee, ASD Realty Trust 35 Butts Street, Newton Upper Falls, MA 02164, by Cape & Island Engineering, 800 Falmouth Road Ste. 301C, Mashpee, MA. Project: Proposed Dock Plan 204 Captains Row, Mashpee, MA. Sheet No: 1 of 2, dated: 12/2/2013, revision date, 2/10/14, and 2/27/14. Drawing Title: Proposed Pier, Ramp & Float Site Plan.

Mr. Reiffarth seconded, yes, Mr. Furbush, yes, Mr. Blaisdell, yes, Mr. Jodka, yes. All were in favor.

NEW HEARINGS

Theodore Ell: Request a Written Finding under Article V §174-17 of the Zoning By-laws and M.G.L. Chapter 40A §6 concerning continuance, extension or alteration of a pre-existing, non-conforming structure to allow for construction of a first floor garage and second floor bath on property located in an R-5 Zoning District at 14 Pem Lane (Map 89 Parcel 3G), Mashpee, MA.

Mr. Steven Cook, of Cotuit Bay Design represented the Petitioner for the proposed project. Theodore Ell and Maureen Creedon, homeowners were present as well as the Builder, Bob Foley. The project consists of a one half-story garage with a bathroom above on a pre-existing, non-conforming house located at 14 Pem Lane. The existing home is non-conforming on the West side by 6 inches as shown on the plot plan. The property shows a cul-de-sac on paper which swings a radius. The 12 foot addition will have an 18 inch wall, a 9 foot door and an 18 inch wall. The outer corner wall brings the addition into the 40 foot radius setback off of Pem Lane. As depicted on the plan, Pem Lane does not have a cul-de-sac, it's on paper only. The road ends. The Written Finding request is the setback of 2.5 feet by 4.0 feet section. An RDA approval was received by Conservation because the property is within the 200 foot setback from the Mashpee River. The homeowners are requesting another structure for their vehicle. Architectural plans were also provided. The setback from the street will be 37.7 feet, therefore requesting a 2.3 foot relief.

Mr. Bonvie read the Board of Health comments into the record; "Septic inspection required. Property is on denite and UV per original 1997 septic permit. Ultra-violet light is reported as not working. UV light to be repaired prior to issuance of building permit."

Mr. Ell approached the Board and stated he has an annual inspection that is required by the Town, and was told that the UV light isn't working. He is waiting for his service inspector to return his call.

Jonathan read the comment from Conservation stating; "14 Pem Lane, is permitted through Conservation and has no issues."

Mr. Bonvie made a motion to issue Theodor Ell a Written Finding under Article V §174-17 of the Zoning By-laws and M.G.L. Chapter 40A §6 concerning continuance, extension or alteration of a pre-existing, non-conforming structure to allow for construction of a first floor garage and second floor bath on property located in an R-5 Zoning District at 14 Pem Lane (Map 89 Parcel 3G), Mashpee, MA. This Finding is issued pending condition requirement from Board of Health regarding repair of the UV light and inspection prior to issuing the Building Permit. Referencing the Site Plan prepared for Theodore Ell, 14 Pem Lane, Mashpee, MA, prepared by J.E. Landers-Cauley, P.E. Civil Environmental Engineering, PO Box 364, West Falmouth, MA. Job No. 2379, dated 04/10/14, Sheet 1 of 1. A set of house plans and elevation plans titled: New Addition/Remodeling for Ell Residence, 14 Pem Lane, Mashpee, MA. Prepared by Cotuit Bay Design, LLC, 43 Brewster Road, Mashpee, MA. A-1 and A-2. Scale: $\frac{1}{4}$ " = 1'-0", dated 4/10/2014. The Board finds the design is not substantially more detrimental than the existing non-conforming structure. The dwelling will be an improvement and conform to current building code requirements, is comparable in size and character to other structures in the neighborhood, and has sufficient parking setbacks as may be required.

Mr. Blaisdell seconded, yes, Mr. Furbush, yes, Mr. Reiffarth yes, Mr. Jodka, yes. All were in favor.

OTHER BUSINESS:

Housing Assistance Corporation: To discuss final site plans, landscaping, and "punch list" items for Great Cove Community/Breezy Acres, 40B Comprehensive Permit.

Ms. Adrienne Danner, introduced herself to the Board requesting the final certificate of occupancy on the fifth building. She stated the building has already been inspected per the Comprehensive Permit. The final site work, paving, landscaping, line stripping, and bio-retention areas are complete.

Mr. Furbush referenced a letter from Charles L. Rowley, dated May 14, 2014, (Mr. Furbush did not read the entire letter, just the last paragraph); "Today I walked the site with Adrienne Danner, of the Housing Assistance Corporation, Christian Valle, General Contractor and Brian Kuchar of Horsely Witten Group for a final site inspection. It is my please to report that the project has been completed in substantial compliance with the approved plans and I recommend a release of the last building in accordance with the provisions of Condition 19 of the Special Permit. Very truly yours, Charles L. Rowley, PE, PLS, Engineering Consultant to Mashpee Zoning Board of Appeals."

Mr. Furbush stated that the Board consulted with Town Counsel. He is naturally concerned because he represents the Town of Mashpee, wanting the "T's" crossed and the "I's" dotted". It appears that in fact it looks complete. He turned the discussion over to Richard Morgan, Building Commissioner who is the real decision maker. Mr. Morgan stated he unfortunately was not invited to the meeting, so he has not seen the site and will review prior to making his final assessment.

Ms. Danner stated she was dependent upon Charles Rowley's final report as the Board's engineer and is stated in the Comprehensive Permit. She thought the fifth building was inspected and was waiting for the final certificate of occupancy. She asked Mr. Morgan if he will perform another inspection even if it was already done.

Mr. Morgan was not notified of the status or extent of Charlie Maintanis' review, and asked Mr. Maintanis to hold onto finalizing the fifth

building. Mr. Morgan stated he will check to see if the building inspection was performed and will go to the site himself. He asked Ms. Danner if hydro-seeding was performed. He said he did not want the weather to destroy and wash away the hydro-seeding, and will not want to release anything if not satisfactory. He would not want people to start leasing the homes without lawns.

Mr. Rowley stated the landscape contractor that work for Valle Construction and Housing Assistance Corporation are responsible to make sure the lawn grows. If any erosion happens, they are responsible to repair it and the grass will have to sustain on its own.

Mr. Furbush requested a copy of the written contract. Mr. Morgan stated that he needs to ask for a bond to make sure this has been accomplished.

Mr. Rowley said this was one issue he hoped was resolved and why he inspected the site. He took photographs of the site and would be helpful to the Board. Everything was there with exception of the grass growing, which will take a month to six weeks. He stated he performed a comprehensive walk-through the morning of Wednesday, May 14th and past Friday and paving was completed. He is comfortable knowing the landscape contractor is responsible for completing the work. He stated as part of the project is slightly different than a normal project with a private developer doing a sub-division, or a site plan with conditions and posting security. In this particular case, the Housing Assistance Corporation gets its funding through the State. They submit a requisition, and if the State approves it, then they receive the payment. So until an inspector looks at the site, they do not release any funding. The contract package between the Corporation and State, is assuring that everything will comply, such as planting of trees, shrubs, and all the bio-retention landscape around each building is secured to get the funding. He's not sure what the retainage is with the State but it is substantial.

Mr. Bonvie asked if there is a document stating or a contract with Valle that if the seeding doesn't grow he has to return. Ms. Danner will email the information.

Mr. Furbush stated it is not up to the Board of Appeals, it's up to the Building Commissioner. The only reason as stated if a Bond was required.

Mr. Morgan stated he will make a site visit and when satisfied will notify everyone involved of his decision. Mr. Rowley asked the Board to make this discussion part of the record as documented in Section 19 of the Comprehensive Permit. He said the Board needs to make a recommendation of a release of the building not the lot. If this is part of the meeting minutes, it will be best for all concerned. Not a vote to release the building, but a recommendation to Mr. Morgan's approval.

Mr. Bonvie made a motion recommending the release of the Certificate of Occupancy for the final building (Building #5), and any completion required under the Comprehensive Permit pending the Building Inspector's approval. Mr. Blaisdell, seconded, yes, Mr. DeBarros, yes, Mr. Goldstein, yes, Mr. Jodka, yes, Mr. Jodka, yes, Mr. Furbush, yes. All were in favor.

Approve April 23, 2014 Meeting Minutes

Mr. DeBarros made a motion to approve the April 23, 2014 meeting minutes yes, Mr. Blaisdell, seconded, yes, Mr. Furbush yes, Mr. Reiffarth, yes, Mr. Goldstein, yes, Mr. Jodka, yes. Mr. Bonvie abstained as he was not at the meeting.

Mr. Reiffarth made a motion to adjourn, Bill Blaisdell, seconded, yes, Mr. Furbush, yes, Mr. Jodka, yes, Mr. Goldstein, yes, Mr. DeBarros, yes, and Mr. Bonvie, yes. All were in favor.

Respectfully submitted,

Mary Ann Romero
Administrative Secretary
Zoning Board of Appeals